IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 352 of 1996

Date of Decision: 25th September, 2007

Suresh Chand	Appellant
Versus	
Nanak Chand and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.Ajay Sharma, Advocate.

For the respondents: None for the respondents, though served.

Sanjay Karol, J. (Oral)

The present appeal was admitted on the following substantial questions of law:-

1) Whether both the learned Courts below erred in appreciating the provisions of law applicable, pleadings of the parties and evidence adduced by them, and thereby vitiating the impugned judgments and decrees?
2) Whether in view of the facts of the present case, provisions of Order 2 Rule 2 and Section 11 of the CPC, the present suit is not maintainable?
3) Whether documents Ext.A-2 and A-3 have wrongly been appreciated by the Courts below, thereby vitiating the impugned judgments and decrees?
4) Whether the impugned judgments and decrees stand vitiated for want of framing proper Issues?

The present appeal arises out of judgment and decree dated 19th June, 1996 passed by Addl. District Judge-1, Kangra at Dharamshala, in

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

civil appeal No. 42-K/95, titled as Dhanpat vs. Nank Chand dismissing the appeal filed by the appellant and upholding the judgment and decree dated 15th June, 1995 passed by Sub Judge, Ist Class, Kangra, whereby the suit of the plaintiff-appellant was dismissed.

When the matter came up for hearing, learned counsel for the appellant vehemently argued that the Court below has seriously erred in arriving at conclusion that the appellant was not the owner in possession of the suit property.

With regard to Question No.2 as framed by this Court, it is pertinent to refer to the finding recorded by the trial Court wherein it has been held that from the previous decisions rendered by the Courts, inter se between the parties, the plaintiff was held not to be in possession of the suit land and consequently the subsequent suit was held to be barred by the provisions of Order 2 Rule 2 and 3 as also Section 11 of the Code of Civil Procedure.

I have gone through the material on record and am in agreement with the reasoning recorded by the Courts below for arriving at their conclusion. It is clear from the orders/judgments Ext. D-4 to Ext.D-5, Ext. D7, Ext.D-8, Ext.D-10 and Ext. D-12, passed by Courts in proceedings inter se between the parties the subject matter of the suit is same. Question of law is answered accordingly.

In so far as the other questions of law are concerned, in Para 8 of the impugned judgment, it has been recorded that plaintiff's claim on the ground of adverse possession was not considered as it was not pressed by the plaintiff during the course of hearing. This position is not disputed by the learned counsel at the Bar. There is no need to interfere with the impugned judgment and decree and the questions of law are not answered in view of the concession given by the plaintiff in the trial Court.

The appeal is accordingly dismissed. There shall be no order as to costs.

25th September, 2007 (Sanjay Karol), J.
(C)